

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANA-BORGER GRECO	:	
Administratrix of the Estate of	:	
JOSE GRECO, Deceased	:	CIVIL ACTION
	:	
v.	:	NO. 02-CV-6862
	:	
THE NATIONAL RAILROAD	:	
PASSENGER CORPORATION	:	
(AMTRAK), ET AL.	:	

**MEMORANDUM ORDER**

AND NOW, this 16<sup>th</sup> day of November, 2004, it appearing that Defendants have refused to produce certain information requested by Plaintiff during discovery, and it appearing that counsel have requested that the Court rule on this request, it is ORDERED that: Plaintiff's request that Defendants produce all information relating to prior complaints of excessive force filed against Officers Drury and Malloy is GRANTED in part and DENIED in part.

1. Under the Federal Rules of Civil Procedure, the scope of discovery is broad and encompasses any matter that is relevant to a claim or defense of either the plaintiff or the defendant. Fed. R. Civ. P. 26(b)(1); *see also Revelle v. Trigg*, Civ. A. No. 95-5885, 1999 U.S. Dist. LEXIS 890, at \*4 (E.D. Pa. Feb. 2, 1999). "Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1). Plaintiff asserts that Officers Drury and Malloy caused harm to Mr. Greco when they exerted excessive force against him. Plaintiff's request for information about prior complaints of excessive force against Officers Drury and Malloy is relevant to her claims against Defendants. *Revelle*, 1999 U.S. Dist. LEXIS 890, at \*9-10.

Plaintiff requests that Defendants produce certain personal information in its privilege log

concerning various individuals, including complainants, witnesses, and suspects. Defendants refused to produce the personal information about these persons, citing lack of relevance. Such requested information may be withheld based on relevance only to the extent that it does not relate to prior complaints of excessive force against Officers Drury and Malloy. In such instances, the information should not be produced because it is neither relevant to the excessive force complaints against Officers Drury and Malloy, nor reasonably calculated to lead to the discovery of admissible evidence.<sup>1</sup> *See Revelle*, 1999 U.S. Dist. LEXIS 890, at \*12.

Furthermore, personal information, such as a person's birth date, social security number, credit card number, or license plate number, is not relevant to any prior complaint, regardless of whether it was filed against any of the Defendants, and need not be produced.

2. Because certain information that relates to prior excessive force complaints against Officers Drury and Malloy is relevant, the Court must determine whether Defendants properly assert a privilege as to any of the withheld information. In a civil rights case involving both federal and state law claims, a party may withhold information pursuant to a recognized privilege under federal law. *Johnson v. City of Philadelphia*, Civ. A. No. 94-1429, 1994 U.S. Dist. LEXIS 15872, at \*29-30 (E.D. Pa. Nov. 7, 1994). Unlike relevance, however, privilege is to be construed narrowly. 6 James Wm. Moore et al., *Moore's Federal Practice* ¶ 26.47 (3d ed. 1999). Moreover, the burden of establishing that a privilege exists rests with the party claiming the privilege. *Id.* In their privilege log, Defendants assert two privileges regarding the requested

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<sup>1</sup>For instance, Plaintiff requests that Defendant produce certain personal information about a prisoner which is contained in a prisoner property report (GR 1394). The report itself does not appear to be related to a prior complaint of excessive force against Officer Drury or Officer Malloy.

information: (1) attorney-client privilege and (2) right to privacy.<sup>2</sup>

3. Plaintiff requests information about two documents on Defendants' privilege log (GR 1535-1536 and GR 1619-1620) that Defendants argue are subject to the attorney-client privilege. The privilege may only shield from disclosure a communication between an attorney and his client that contains confidential legal advice. *United States v. Rockwell Int'l*, 897 F.2d 1255, 1264-65 (3d Cir. 1990). A party raising the attorney-client privilege must assert it for each specific document subject to the privilege. *Id.* at 1265. Even though Defendants' privilege log does not reflect that GR 1535-1536 contains information which is subject to the attorney-client privilege, Defendants aver that the document contains a legal opinion from outside counsel for Amtrak.<sup>3</sup> The privilege log shows that GR 1619-1620 was also withheld under the attorney-client privilege. Defendants explained that this specific document was an internal Amtrak memo which contains legal opinion and was prepared by an Amtrak attorney. Based on these representations, we conclude that each of these documents contains information which was properly withheld pursuant to the attorney-client privilege.<sup>4</sup> Accordingly, this information should not be shared with the Plaintiff.

4. Plaintiff also requests that Defendants produce documents referencing the names and

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<sup>2</sup>Defendants fail to raise any claim of privilege with respect to certain relevant information, such as the identities of certain police officers. In instances where Defendants do not even attempt to satisfy their burden of showing why a privilege applies, the information is discoverable and should be produced.

<sup>3</sup>We instruct Defendants to amend their privilege log appropriately to reflect that part of document GR 1535-1536 was withheld pursuant to the attorney-client privilege.

<sup>4</sup>There is no suggestion that the privilege was waived by Defendants through either intentional or inadvertent disclosure to a third party.

contact information of complainants, witnesses, and suspects. Defendants object to the production of this information based on a right to privacy.<sup>5</sup> The Court recognizes that producing information “which would deter citizens in making complaints or which would hamper ongoing criminal investigations are often protected from discovery, at least in unredacted form, because of the threat disclosure of those documents poses to the investigation and prosecution of wrongdoing.” *Revelle*, 1999 U.S. Dist. LEXIS 890, at \*9. The party opposing production of such complainant information, however, must provide some rationale for withholding it. *Id.* (noting that “the mere bald assertion that discovery of the information will breach the confidence of police and citizens who have given information and deter future disclosures is not a sufficient basis for withholding discovery of relevant evidence”).

Defendants have not sufficiently explained the privacy interests protected by withholding the names and contact information of complainants. We are not persuaded that revealing the names of such individuals who were involved in *closed* matters violates any right to privacy. *See, e.g., Stewart v. Rouse*, No. 97 C 8141, 1998 U.S. Dist. LEXIS 10207, at \*3 (N.D. Ill. July 6, 1998) (“Generally . . . the discovery interests of those making civil rights complaints outweigh the privacy interests of the complainants.”); *Kelly v. City of San Jose*, 114 F.R.D. 653, 666 (N.D. Cal. 1987) (explaining that “courts should ascribe little weight to a police department’s purported interest in preserving the anonymity of citizen complainants”) (citing *Frankenhauser v. Rizzo*, 59 F.R.D. 339, 344 (E.D. Pa. 1973)). A person who complained to the police department about the alleged excessive use of force by Officers Drury or Malloy likely would want to assist another

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<sup>5</sup>Such a privilege may be raised in response to a discovery request. *Soto v. City of Concord*, 162 F.R.D. 603, 616 (N.D. Cal. 1995).

citizen who raises the same allegations. *See Kelly*, 114 F.R.D. at 666 (stating that a citizen complainant “presumably would want their complaint to help someone who had suffered from a similar source”). There also is no other effective way for the Plaintiff to obtain additional reliable information about other prior complaints. Thus, Defendants are instructed to produce the names and contact information of complainants who claimed that either Officer Drury or Officer Malloy exerted excessive force against them.<sup>6</sup>

Defendants should not produce the names and contact information of non-complainant witnesses and suspects. Unlike a complainant, none of these parties chose to communicate with the police department about the conduct of Officers Drury and Malloy and likely would prefer not to have their identities revealed through discovery. Furthermore, complainants can provide Plaintiff with key details about their excessive force complaints.

Defendants are directed to produce information responsive to this ORDER by November 19, 2004.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge

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<sup>6</sup>The Court emphasizes that Defendants should not reveal any identifying information about a person involved with a pending investigation.